IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.474 OF 2006

In

SUMMONS FOR JUDGEMENT NO.547 OF 2005

In

SUMMARY SUIT NO.1617 OF 2005

Escorts Limited : Appellant

(Orig. Defendant)

V/s.

Reauters India Pvt. Ltd. : Respondent

(Orig. Plaintiff)

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Mr.K.D.Shah for the appellant.

Dr.Virendra Tulzapurkar, senior counsel, with Ms P. Dholakia i/b. M/s.Dholakia Gupte & Co., for the respondent.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : SEPTEMBER 11, 2006.

P.C.

1. We heard Mr.K.D.Shah, the counsel for the appellant, and Dr.Virendra Tulzapurkar, senior counsel for the respondent.

2. Admit.

3. Ms P. Dholakia, Advocate on record waives service for the respondent.

4. By consent of the counsel and the senior counsel for the parties, we dispose of the appeal at this stage.

5. Dr. Virendra Tulzapurkar, senior counsel for the respondent (plaintiff) submitted, and in our view, fairly, that insofar as 12 invoices out of 18 invoices are concerned, the question of limitation may require consideration in the trial of the suit. In this back-drop, the senior counsel submitted that with regard to eight invoices amounting to Rs.5,73,886.09, there being no defence for the appellant, the decree passed by the trial Judge may be modified accordingly.

6. Mr.K.D.Shah, the counsel for the appellant, agrees that with regard to eight invoices amounting to Rs.5,73,866.09, the amount claimed is within limitation and, therefore, the appellant does not have much to say in this regard. He submitted that the appellant shall satisfy the decree in the sum of Rs.5,73,866.09 along with interest at the rate of 12% per annum from the date of filing of the suit until the date of payment.

7. In the light of the aforesaid submissions, we dispose of the appeal by giving the following order:-

O R D E R

(i) The appellant (defendant) is granted unconditional leave to defend the suit in respect of the claim in the suit, save and except for the claim to the extent of Rs.5,73,866.09.

(ii) The decree passed by the learned trial Judge in favour of the respondent (plaintiff) and against the appellant (defendant) is modified and the plaintiff's suit shall stand decreed in the sum of Rs.5,73,866.09 with interest thereon at the rate of 12% per annum from the date of filing of the suit until payment and/or realisation.

(iii) We accept the statement of the counsel for the appellant that the aforesaid decree shall be satisfied by the appellant within six weeks from today. We clarify that the statement of the counsel for the appellant has been accepted by us as an undertaking on behalf of the appellant and for breach thereof, the appellant shall expose himself to the deliberate disobedience of the order

of this Court. Besides that, the decree shall be executed, in accordance with law, for the said amount.

(iv) The appellant (defendant) is granted further time of six weeks for filing Written Statement.

(v) The suit shall be proceeded with as a commercial cause accordingly.

R.M. LODHA, J.

S.A. BOBDE, J.